

various motions.² (D.I. 80) State defendants moved for reconsideration and filed an answer. (D.I. 84, 86) The remaining defendants moved to dismiss. (D.I. 83) Plaintiff moved for appointment of counsel (D.I. 91, 99), filed opposition to defendants' motion (D. I. 105) and moved to amend his complaint and answering brief. (D.I. 95, 100, 108)

II. STANDARD OF REVIEW

Because the parties have referred to matters outside the pleadings, defendants' motion to dismiss shall be treated as a motion for summary judgment. See Fed. R. Civ. P. 12(b)(6). A court shall grant summary judgment only if "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). The moving party bears the burden of proving that no genuine issue of material fact exists. See Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586 n.10 (1986). "Facts that could alter the outcome are 'material,' and disputes are 'genuine' if evidence exists from which a rational person

²Specifically, defendant PHS' motion to dismiss was granted, defendant CMS' motion to dismiss was denied, defendants DOC, Carroll and Downing's motion to dismiss was granted in their official capacity and denied in their personal capacity. (D.I. 80) Plaintiff's motion for appointment of counsel was denied and his request for discovery was granted. (D.I. 80)

could conclude that the position of the person with the burden of proof on the disputed issue is correct.” Horowitz v. Fed. Kemper Life Assurance Co., 57 F.3d 300, 302 n.1 (3d Cir. 1995) (internal citations omitted). If the moving party has demonstrated an absence of material fact, the nonmoving party then “must come forward with ‘specific facts showing that there is a genuine issue for trial.’” Matsushita, 475 U.S. at 587 (quoting Fed. R. Civ. P. 56(e)). The court will “view the underlying facts and all reasonable inferences therefrom in the light most favorable to the party opposing the motion.” Pa. Coal Ass’n v. Babbitt, 63 F.3d 231, 236 (3d Cir. 1995). The mere existence of some evidence in support of the nonmoving party, however, will not be sufficient for denial of a motion for summary judgment; there must be enough evidence to enable a jury reasonably to find for the nonmoving party on that issue. See Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249 (1986). If the nonmoving party fails to make a sufficient showing on an essential element of its case with respect to which it has the burden of proof, the moving party is entitled to judgment as a matter of law. See Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986).

III. DISCUSSION

To state a violation of the Eighth Amendment right to adequate medical care, plaintiff “must allege acts or omissions sufficiently harmful to evidence deliberate indifference to

serious medical needs." Estelle v. Gamble, 429 U.S. 97, 106 (1976); accord White v. Napoleon, 897 F.2d 103, 109 (3d Cir. 1990). Plaintiff must demonstrate that: (1) he had a serious medical need; and (2) defendant was aware of this need and was deliberately indifferent to it. See West v. Keve, 571 F.2d 158, 161 (3d Cir. 1978); see also Boring v. Kozakiewicz, 833 F.2d 468, 473 (3d Cir. 1987). Either actual intent or recklessness will afford an adequate basis to show deliberate indifference. See Estelle, 429 U.S. at 105.

The seriousness of a medical need may be demonstrated by showing that the need is "'one that has been diagnosed by a physician as requiring treatment or one that is so obvious that a lay person would easily recognize the necessity for a doctor's attention.'" Monmouth County Corr. Inst. Inmates v. Lanzaro, 834 F.2d 326, 347 (3d Cir. 1987) (quoting Pace v. Fauver, 479 F. Supp. 456, 458 (D.N.J. 1979)). Moreover, "where denial or delay causes an inmate to suffer a life-long handicap or permanent loss, the medical need is considered serious." Id.

As to the second requirement, an official's denial of an inmate's reasonable requests for medical treatment constitutes deliberate indifference if such denial subjects the inmate to undue suffering or a threat of tangible residual injury. Id. at 346. Deliberate indifference may also be present if necessary medical treatment is delayed for non-medical reasons, or if an

official bars access to a physician capable of evaluating a prisoner's need for medical treatment. Id. at 347. However, an official's conduct does not constitute deliberate indifference unless it is accompanied by the requisite mental state. Specifically, "the official [must] know . . . of and disregard . . . an excessive risk to inmate health and safety; the official must be both aware of facts from which the inference can be drawn that a substantial risk of serious harm exists, and he must also draw the inference." Farmer v. Brennan, 511 U.S. 825, 837 (1994). While a plaintiff must allege that the official was subjectively aware of the requisite risk, he may demonstrate that the official had knowledge of the risk through circumstantial evidence and "a fact finder may conclude that a[n] . . . official knew of a substantial risk from the very fact that the risk was obvious." Id. at 842.

The law is clear that mere medical malpractice is insufficient to present a constitutional violation. See Estelle, 429 U.S. at 106; Durmer v. O'Carroll, 991 F.2d 64, 67 (3d Cir. 1993). Prison authorities are given extensive liberty in the treatment of prisoners. See Inmates of Allegheny County Jail v. Pierce, 612 F.2d 754, 762 (3d Cir. 1979); see also White, 897 F.2d at 110 ("[C]ertainly no claim is stated when a doctor disagrees with the professional judgment of another doctor. There may, for example, be several acceptable ways to treat an

illness."). The proper forum for a medical malpractice claim is in state court under the applicable tort law. See Estelle, 429 U.S. at 107.

Since April 19, 2000, plaintiff has kept a detailed log of his medical care. (D.I. 74) He alleges, essentially, that defendants have provided inadequate medical care in the treatment of his Hepatitis C. He denies being instructed on the proper procedure for injection of Interferon, a drug prescribed to treat the disease. He states that the vials given for self-injection were filled with an incorrect amount of Interferon. As a result, plaintiff developed a skin infection. He explains that

when complications occurred in the form of a staff [sic] infection which turned into an open hole 2 ½" L x 2"W and ½" D and left leg swelled to one and one half its normal size and was covered with infection pockets and cellulitis from mid calf to hip that the defendants did not treat this complication with the urgency that it required resulting in an infection pocket breaking loose and causing plaintiff a myocardial infarction so severe it almost cost his life and so violent that he sustained a hiatal hernia, showed deliberate indifference and gross negligence.

(D.I. 2 at 1) He complains about the course of debreedment used to treat the infection, as well as the lack of drugs prescribed to treat the pain accompanying the surgical procedure used to counter the infection. He also claims that defendants have failed to provide a special diet to accommodate his other medical problems.

Defendants have moved for summary judgment arguing that

plaintiff received extensive and adequate treatment for his medical problems. (D.I. 94) They deny that their conduct rises to an Eighth Amendment violation.

Having reviewed the extensive medical records, logs and affidavit presented (D.I. 94, Exs. 5, 14, 15, 16; D.I. 2, 95, 98, 100, 105), the court finds that the medical care provided plaintiff was not violative of the Eighth nor Fourteenth Amendments. Instead, the documents demonstrate a consistent course of treatment for plaintiff's problems. There is nothing of record to suggest that defendants acted with deliberate indifference to his medical needs. Farmer v. Brennan, 511 U.S. at 837. The court credits the testimony of FCM Medical Director Dr. Sitta Gombeth-Alie as reflective of the adequate medical care provided to plaintiff's chronic conditions. (D.I. 94, Ex. 5) While plaintiff³ may disagree with the course of his treatment as well as the efforts of defendants, such disagreements do not constitute a constitutional violation actionable under 42 U.S.C. § 1983 action. See Durmer v. O'Carroll, 991 F.2d at 67.

IV. CONCLUSION

At Wilmington this 18th day of December, for the reasons stated,

³Although plaintiff's opposition (D.I. 105) painstakingly details his medical problems and disagreements with the treatments, these copious notes demonstrate that medical care has been provided within the confines of the Eighth Amendment.

IT IS ORDERED that:

1. Defendants' motion for summary judgment is granted.

(D.I. 83)

2. Plaintiff's motions for appointment of counsel are denied as moot. (D.I. 91, 99)

3. Plaintiff's motions to amend his complaint are denied.⁴
(D.I. 95, 98, 100)

4. The Clerk of Court is directed to enter judgment in favor of defendants⁵ and against plaintiff.

Sue L. Robinson
United States District Judge

⁴The motions to amend only indicate the amount of damages he seeks rather than buttressing his claims.

⁵As identified in defendants' motion. (D.I. 83)